

EDO Principal Correspondence Control

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FINAL REPLY:

William J. Desmond
U.S. Department of Energy (DOE)

TO:

Reyes, EDO

FOR SIGNATURE OF : ** GRN **

CRC NO:

Reyes, EDO

DESC:

ROUTING:

IAEA Inspections at U.S. Facilities

Reyes
Virgilio
Kane
Silber
Dean
Burns
Zimmerman, NSIR
Travers, RII
Cyr, OGC
Lee, IP

DATE: 01/31/06

ASSIGNED TO: NMSS CONTACT: Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

Template: EDO-001

E-RIDS: EDO-01



Department of Energy
National Nuclear Security Administration
Washington, DC 20585



JAN 25 2006

Mr. Luis A. Reyes
Executive Director of Operations
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Reyes:

I am writing to you concerning lead agency roles and responsibilities for International Atomic Energy Agency (IAEA) inspections at U.S. facilities. There are currently four nuclear facilities in the U.S. with on-site inspection activities conducted by the IAEA. Three of these facilities are Department of Energy (DOE) facilities: the Y-12 Plant, the Hanford Site, and the Savannah River Site. The fourth facility is the BWXT Nuclear Products Division in Lynchburg, Virginia. The Lynchburg facility is licensed by the Nuclear Regulatory Commission (NRC) and contracted by the DOE to fabricate fuel for the U.S. Naval Reactors Program. It is also performing downblending of highly enriched uranium (HEU) to low enriched uranium (LEU) for the United States Enrichment Corporation as part of DOE's efforts to dispose of excess HEU. There is also a possibility that it may perform additional HEU downblending for DOE's disposition program in the future. The bulk of materials stored, programs executed, and associated classified information at BWXT Lynchburg is the responsibility of the DOE.

Successful IAEA inspections of the HEU downblending operations at the Lynchburg facility have been ongoing since the mid-1990s. Under the Code of Federal Regulations, the NRC is designated as the lead agency for these inspections. Our agencies worked together with the IAEA on the development and implementation of an inspection regime at Lynchburg that accomplished non-proliferation goals while protecting national security. This is a delicate balance at this most sensitive facility. The current inspection regime is carried out under our existing treaty with the IAEA, the U.S./IAEA Voluntary Offer Agreement. While inspections under this current treaty allow for predictable inspection activities with ample planning timelines, the U.S. is preparing to ratify an Additional Protocol (AP) to the treaty. The AP provides the IAEA with significant flexibility in activities and tools in a much compressed timeframe. While the AP will contribute to the IAEA's overall inspection effectiveness worldwide, its



implementation in the U.S. at sensitive facilities causes concern. This concern was discussed at meetings of the Subgroup of the Policy Coordinating Committee of the National Security Council. As a result, the DOE was designated as the lead agency for implementing the AP at "locations owned, operated, or leased by or for DOE, including NRC-licensed or certified activities on DOE installations, and, in coordination with the Department of Defense, non-military locations on installations that store or process naval reactor fuel."

Once the AP enters into force, it may be invoked during an inspection under the existing treaty resulting in access to other areas of the site within hours. Due to the sensitive nature of the materials, programs, and classified information at risk, I propose we reach agreement in principle to align the lead agency designations for inspection activities under the current treaty with those agreed upon for the AP. This will allow the Department to have continuity of responsibility for IAEA inspection activities at these facilities, ensuring timely decisions affecting national security assets while preserving an important role for the NRC in the established interagency process.

If we are in agreement, then I propose our respective staffs work together to make appropriate changes to the Code of Federal Regulations. If you would like to discuss this matter further, please feel free to contact me at (202) 586-8900.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Desmond". The signature is fluid and cursive, with a large initial "W" and "D".

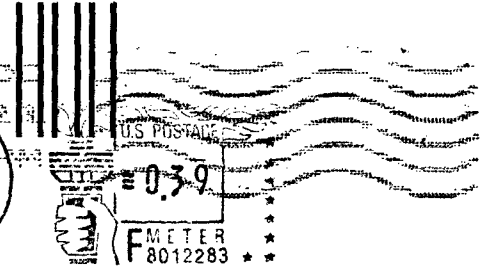
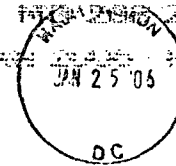
William J. Desmond
Associate Administrator
for Defense Nuclear Security

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